

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 99-0213 MVE
MOTOR VEHICLE EXCISE TAX
FOR TAX PERIOD: 12/97 THROUGH 11/98**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department=s official position concerning a specific issue.

ISSUE

I. Motor Vehicle Excise Tax – Imposition

Authority: IC 9-13-2-78; IC 9-18-2-1

Taxpayers protest the imposition of the Motor Vehicle Excise Tax on their vehicles.

STATEMENT OF FACTS

Taxpayers were assessed the Motor Vehicle Excise Tax on three vehicles. The vehicles taxed were a 1997 Dodge, a 1998 Mercedes Benz, and a 1994 Volvo. Prior to becoming Indiana residents, taxpayers were residents of California. Taxpayers filed Indiana part-year resident individual income tax returns for tax year 1997. Taxpayers were assessed the Motor Vehicle Excise Tax from the date reported on the part-year resident return. Additional information will be provided below, as necessary.

I. Motor Vehicle Excise Tax – Imposition

DISCUSSION

Pursuant to Indiana Code section 9-18-2-1, within sixty days of becoming an Indiana resident, a person must register all motor vehicles owned by that person that will be operated in Indiana.

Indiana Code section 9-13-2-78 defines "Indiana resident" as a person who is one of the following:

- (1) A person who has been living in Indiana for at least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state. However, the term does not include a person who has been living in Indiana for any of the following purposes:
 - (A) Attending an institution of higher education.
 - (B) Serving on active duty in the armed forces of the United States.
- (2) A person who is living in Indiana if the person has no other legal residence.
- (3) A person who is registered to vote in Indiana.
- (4) A person who has a child enrolled in an elementary or secondary school located in Indiana.
- (5) A person who has more than one-half (1/2) of the person's gross income derived from sources in Indiana ... However, a person who is considered a resident under this subdivision is not a resident if the person proves by a preponderance of the evidence that the person is not a resident under subdivisions (1) through (4).

Taxpayers claim they do not owe the motor vehicle excise tax for the assessment period because they were not residents of Indiana. Taxpayers claim the part-year Indiana resident tax return was completed in error. Taxpayers claim they had purchased property in Indiana in December, 1997, but did not move to Indiana or operate their vehicles in Indiana prior to August of 1998. The date the taxpayers closed on the Indiana property was the date mistakenly stated on the income tax return.

Taxpayers claim they decided to allow their children to finish the 1997-1998 school year in California. Taxpayers have provided documentation illustrating both children attended schools in California during this time. The husband was required to frequently travel to Indiana during the assessment period but always flew to Indiana, stayed in hotels and drove rental vehicles while in Indiana. The majority of the husband's work-related duties were performed in California.

The taxpayers argue they maintained their vehicle registrations and insurance in California throughout the assessment period and have submitted documentation to support this claim. Taxpayers moved into their Indiana residence on August 1, 1998. Pursuant to IC 9-18-2-1, taxpayers were required to register their vehicles within sixty days. Taxpayers failed to register the vehicles within sixty days and are liable for the period from August 1, 1998 through the date of the vehicles' registrations.

FINDING

Taxpayers' protest is sustained in part and denied in part. Taxpayers were not responsible for motor vehicle excise tax prior to August 1, 1998. Taxpayers are liable for the period August 1 through the date the vehicles were properly registered in Indiana.